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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/619,947	07/20/2000	John A. Kuelbs	0581MH-35583	2854

7590 05/25/2004  
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EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/619,947

Applicant(s)

KUELBS ET AL.

Examiner

Mark Fadok

Art Unit

3625

*WU*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 57-195 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 57-195 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

The examiner is in receipt of applicant's response to Office Action mailed 5/23/2003, which was received in amendments dated 12/1/2003 and 3/15/2004. The drawing and the USC 112 rejection have been overcome by the amendment and new drawing submittal dated 4/27/2004. The applicant's amendments and arguments have been carefully considered and were found convincing, however, a new grounds of rejection is provided below, which was necessitated by amendment.

***Election/Restrictions***

Newly submitted claims 57-195 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The new claims add additional species to that originally presented which change the scope of the invention (see at least the features of claim 128 item c and g, which are found in each of the independent claims which was cited in interview summary dated 2/11/2004).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 57-196 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Art Unit: 3625

***Declaration of James Munch***

The declaration under 37 CFR 1.132 filed 12/19/2003 is insufficient to overcome the rejection of claims 1-56 based upon rejection on the merits as set forth in the last Office action because: The affidavit amounts to only opinions of an individual and is not based on facts, therefore, the affidavit was given little patentable weight.

This declaration has not been identified as a 1.132 affidavit. Appropriate action is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (6,418,415), in view of Shkedy (6,260,024), in view of Duke, in view of Shoham (6,584,451), in view of Tozzoli (6,151,588), and further in view of Official Notice.

In regards to claims 1-56, Walker teaches all the limitations of the instant application, for instance, Walker teaches an e-commerce site that provides buyers with a reward for purchasing goods early and progressively recalculates the reward as

Art Unit: 3625

product is purchased at later times (see at least the abstract, summary and drawings).

Walker however does not specifically teach the following:

In regards to claims 1,20, and 39, Walker does not specifically teach creating pricing in accordance with financial risk. Pallakoff teaches different threshold pricing for different levels of risk (FIG 4). It would be obvious to a person of ordinary skill in the art to include in Walker, associating different pricing for different levels of risk, because this would provide a formulation by which a pricing/reward schedule could be quantified. The combination of Walker/Pallakoff does not however teach early adopters and rewarding them buying early. Duke teaches pricing milestones (Penetration and experience curve and Geographic pricing pages 6 and 7). It would have been obvious to a person having ordinary skill in the art to include in Walker the pricing strategies as taught by Duke, because this would assure that a product is substantially funded through guaranteed orders before production starts.

In regards to claims 1,20 and 39, the combination of Walker/Palakoff/Duke teach milestone pricing, but does not specifically mention that they specify a minimum number of an order. Shoham teaches price variability according to quantity sold (FIG 6B). It would have been obvious to a person of ordinary skill in the art to include changing the price based of volume because this would offer to buyer a notoriously well known discount of a quantity discount on large orders.

Art Unit: 3625

In regards to claims 5,24, and 43, Walker does not specifically teach pre-qualifying buyers, however, Tozzoli teaches qualifying both buyers and sellers (col 10, lines 10-15). It would have been obvious to a person having ordinary skill in the art to include in the combination of Waler/Palakoff/Duke, qualifying buyers and sellers, because this reduces the risk associated with building products for a buyer who has not as yet paid.

In regards to claims 8,27, and 46, Walker does not specifically teach aggregating offers from a varying group of purchasers. Shkedy teaches pooling offers of a plurality of buyers to arrive at a large order that can be submitted to a manufacturer. It would be obvious to a person of ordinary skill in the art to include in Walker pooling offers from a plurality of different buyers, because this would expand the usefulness of Walkers invention and increase the likelihood that the system will be used by a greater number of buyers.

In regards to claims 14,35, and 52, Walker does not specifically teach a plurality of cascading graphical user interface. The use of cascading graphical user interfaces is old and well known in the art. It would be obvious to a person of ordinary skill in the art to include in Walker the cascading interfaces, because that would create a user-friendly environment and make the system easier to use.

Art Unit: 3625

In regards to claims 18,37, and 39, Walker does not specifically teach aggregating the buyers offers and sending them to the manufacturer for acceptance. Shkedy teaches pooling orders and communicating those orders to a potential seller (col 4, lines 50-67)

In regards to claims 19,38,39, and 56, Walker teaches, wherein said aggregated input from said plurality of potential purchasers is provided to potential manufacturers in-part in return for a production guarantee from potential manufacturers (See Shkedy and contract (col 4, lines 50-67)).

In regards to claims 1,20 and 39, Walker teaches pricing milestones but does not specifically mention that the pricing is adjusted based on future supply chain activities or avoidance of future supply chain activities. Duke teaches pricing milestones (Penetration and experience curve and Geographic pricing pages 6 and 7). It would have been obvious to a person having ordinary skill in the art to include in Walker the pricing strategies as taught by Duke, because this would assure that a product is substantially funded through guaranteed orders before production starts.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-56 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

Art Unit: 3625

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-4252**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vincent Millin** can be reached on **(703) 308-1065**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.



Art Unit: 3625

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

***Alexandria, Va. 22313-1450***

or faxed to:

**(703) 872-9306** [Official communications; including  
After Final communications labeled  
"Box AF"]

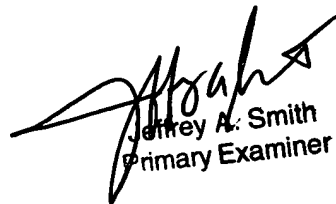
**(703) 746-7206** [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal  
Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.



Mark Fadok

Patent Examiner



Jeffrey A. Smith  
Primary Examiner